

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Southwestern Bell Telephone)
Company's Comparably Efficient)
Interconnection Plan for the Provision)
of Security Service)

CC Docket Nos. 85-229
90-623 and 95-20

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TO: Common Carrier Bureau

REPLY COMMENTS OF AMERITECH CORPORATION
TO SOUTHWESTERN BELL TELEPHONE COMPANY'S
COMPARABLY EFFICIENT INTERCONNECTION PLAN
FOR SECURITY SERVICE

I. INTRODUCTION

On April 4, 1996, Southwestern Bell Telephone Company ("SWBT") filed with the Federal Communications Commission ("Commission") SWBT's Comparably Efficient Interconnection Plan for SWBT's Security Service ("SWBT Plan"). Ameritech Corporation ("Ameritech") and the Alarm Industry Communications Committee ("AICC") filed comments on the SWBT Plan with the Commission on May 24, 1996. Ameritech respectfully files these reply comments. For the reasons set forth in its May 24, 1996 comments, Ameritech remains in opposition to SWBT's filing and repeats its request that the Commission reject SWBT's Plan unless SWBT can demonstrate that its proposed service offering complies with the requirements of Section 275 of the Telecommunications Act of 1996 ("Act"). 47 U.S.C. §275. While Ameritech shares AICC's opposition to SWBT's application and concurs in certain of AICC's analysis and

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conclusions, Ameritech takes exception to many of AICC's assertions and recommendations.

II. DISCUSSION

Ameritech and AICC have both concluded that SWBT's proposed Security Service does not comply with the requirements of Section 275 of the Act and requested that the Commission reject SWBT's Plan. Ameritech and AICC have also agreed on certain underlying principles supporting their request that the Commission reject the SWBT Plan.¹ However, Ameritech takes exception to many other statements and assertions contained within the AICC comments.

As a general proposition, AICC urges the Commission to use the subject proceeding to develop guidelines which will establish a "bright line" to distinguish between "permissible BOC activities and prohibited alarm monitoring services." AICC Comments, at 14. This call for Commission action is unwarranted. The Commission need not, and should not, use the SWBT application as the vehicle for promulgating regulations interpreting Section 275. To the extent regulations are needed to supplement the statutory construct of Section 275, the Commission should develop these regulations through the well-ordered rulemaking process that has already been initiated for other sections of the Act (e.g., the current Section 251-252 rulemaking proceeding). In the present proceeding, the Commission should only determine

¹ For example, Ameritech and AICC agree that a BOC need not directly operate a central monitoring station in order to violate Section 275's basic prohibition on BOC provision of alarm monitoring services. Ameritech Comments, at 4-5; AICC Comments, at 3-4.

whether SWBT's proposed activities, not some hypothetical set of activities, violate the provisions of Section 275.

AICC's comments also stake out a far-ranging group of positions interpreting Section 275. Some are simply irrelevant to judging the propriety of SWBT's Plan. Others ignore the plain meaning of Section 275. All of them are wrong.

First, AICC asserts that entities covered by Section 275 may not "obtain any financial interest in or share revenues with an alarm services provider." AICC Comments, at i. In making this assertion, AICC has misread, or not read, the definitional provisions of the Act. Section 275 prohibits a "Bell Operating Company" or an "affiliate thereof" from engaging in the provision of alarm monitoring services. A "Bell Operating Company" is defined in Section 3(a)(35)(A) to mean one of the telephone companies specifically listed in that section, such as Southwestern Bell Telephone Company. 47 U.S.C. §153(4). Section 3(a)(33) defines "affiliate" to mean:

"A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (for the equivalent thereof) of more than 10%." (47 U.S.C. §153(1)).

Based on these definitions, it is clear that if Southwestern Bell or another BOC owned 10% of a company engaged in the provision of alarm monitoring services and if the BOC did not control said company, there would be no violation of Section 275 arising from this "financial interest" relationship. A "Bell Operating Company" would not be providing the prohibited service because the alarm monitoring company is not one of the telephone companies enumerated in the definition. An "affiliate" of a Bell Operating Company would not be providing the prohibited service because the alarm

monitoring company would not meet the definition of "affiliate", i.e., the company is not controlled by a BOC or more than 10% owned by a BOC. Therefore, contrary to AICC's position, a BOC can have a "financial interest" in an alarm monitoring service company without violating Section 275. Furthermore, since a BOC could own 10% of an alarm monitoring company, it would be entitled, absent arrangements to the contrary, to 10% of the net revenues of such company. Therefore, AICC is wrong in its claim that a BOC cannot share revenues with an alarm monitoring service company.

Second, AICC states that a BOC cannot act as "sales agent" of an alarm monitoring service company without violating Section 275. AICC Comments, at 14. As discussed above, Section 275 is violated only when a "BOC" or an "affiliate" provides alarm monitoring service. The requisite "providing" would arise if the BOC, or an affiliate thereof, physically provides the service, resells the service, or acts as a prime contractor using a subcontractor to physically provide this service. On the other hand, a BOC would not be "providing" alarm monitoring service merely as a result of acting as a true "sales agent" of an alarm monitoring service company. In such a situation, the principal, not the agent, is providing the service.² Even AICC admits that "a distinction between the 'sale' of alarm services and the 'provision' of such services might be possible in theory...." AICC Comments, at 14. There is simply no basis for concluding that Section 275 prohibits a BOC from acting as a true sales agent of an alarm monitoring service company.

² A BOC is not acting as a true sales agent of an alarm monitoring company when it, like SWBT in its Plan, negotiates with an alarm monitoring company "an agreed upon fee" for the central station monitoring service provided, offers the central station service as part of its own branded end-to-end service ("SWBT Security Service") and recovers the agreed-upon fee plus additional amounts in a single charge billed to the end-user.

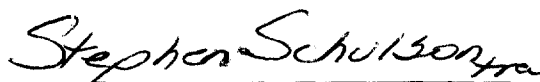
Third, AICC opines that a "grandfathered" BOC is prohibited from growing its grandfathered operations by the "purchases of customer contracts." AICC Comments, at 3 n5. However, this alleged prohibition on a grandfathered BOC is nowhere to be found in Section 275. Rather, the only prohibition on expansion by a grandfathered BOC is on "acquir[ing] any equity interest in, or obtain[ing] financial control of" an alarm monitoring service company. 47 U.S.C. §275(a)(2).

Finally, AICC argues that "for the duration of the alarm monitoring restriction, SWBT should be prohibited from obtaining a superior right to an alarm monitoring entity, or a set of customers of an alarm monitoring entity." AICC Comments, at 14. According to AICC, these prohibited "superior rights" should include "a right to purchase the entity, a right of first refusal, or any option exercisable after the expiration of the prohibition." AICC Comments, at 14. Ameritech disagrees. The restriction set forth in Section 275 places a five-year prohibition on "the provision of alarm monitoring services." A right of first refusal, purchase option, or similar contingent interest does not transform the holder of such right into a provider of the prohibited service.

III. CONCLUSION

For the reasons set forth in its May 24, 1996 comments, Ameritech requests the Commission to reject SWBT's Plan unless SWBT can demonstrate that its proposed activities comply with the requirements of Section 275 of the Act. Ameritech also recommends that the Commission restrict its present inquiry and holding to the fitness of the SWBT Plan and avoid any quasi-rulemaking on issues not presented by the SWBT application. If the Commission opts to rule on issues beyond the SWBT application, Ameritech urges the Commission to reject the AICC interpretations discussed above and instead adopt Ameritech's positions as herein stated.

Respectfully submitted,

A handwritten signature in cursive script, reading "Stephen S. Schulson".

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